

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	

**The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance,
Inc.**

Consolidated Reply to Oppositions to

Petitions for Reconsideration and Clarification

The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. ("IMWED") hereby submits this Consolidated Reply to

Oppositions to Petitions for Reconsideration and Clarification in connection with the Commission's Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order ("2006 Order").¹

I. Hispanic Information and Telecommunications Network ("HITN") and the Clarendon Foundation ("Clarendon") have raised important public interest issues pertaining to the length of EBS leases which the Commission should address through clarification of its rules and policies.

Clarendon's Petition for Reconsideration raises the issue of whether it is possible under certain circumstances for the Commission's Rules and policies to permit perpetual EBS leases.² HITN points out that certain commercial entities have taken captious positions concerning the length of legacy leases from the wireless cable era that have the effect of forestalling broadband service.³

In response, the Wireless Communications Association International, Inc. ("WCAI"), the WiMAX Forum, and Sprint Nextel Corporation ("Sprint Nextel") have variously characterized these concerns as requests to re-write

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order ("2006 Order").

² Clarendon Petition for Limited Clarification of EBS Term Limits, pp. 5-7.

³ HITN Petition for Further Reconsideration and Request for Clarification ("HITN Petition"), pp. 7-9.

EBS leasing agreements,⁴ and an effort to draw the Commission into private contractual disputes.⁵

IMWED---not a party to the supposed private contractual disputes---believes that the length of EBS leases is a vital public interest issue. Indeed, the Commission considered impassioned arguments on all sides of this very question for many months as it assembled the 2006 Order. IMWED believes that perpetual EBS leases are entirely unacceptable, perceives Clarendon to be asking that the Commission to eliminate any ambiguity about its policy on this issue. There is of course a connection between public policy and private agreements given the fact that Commission Rules and policies delimit what excess capacity leases can provide, but Clarendon is far from asking the Commission to adjudicate a private dispute or invalidate a lease. IMWED supports both Clarendon's request for a clarification and its call for an omnibus ban on perpetual leases.

HITN's pleading points out that legacy video-era agreements---in contravention of the Commission's elaborately-developed effort to transition EBS service to wireless broadband---arguably might be extended in a manner that blocks the very service the Commission intends to foster. Once again, this is a public interest issue which the FCC needs to address, not in the context of private adjudication but of a clear enunciation of regulatory policy.

⁴ Comments and Consolidated Opposition of Sprint Nextel Corporation to Petitions for Reconsideration ("Sprint Nextel Oppostion"), pp. 18-21.

⁵ WiMAX Forum Comments on Petitions for Reconsideration, pp. 6-7; Consolidated Opposition and Comments of WCAI, pp. 24-28

II. IMWED opposes various proposals to change the manner in which Grandfathered EBS systems and BRS systems are to divide spectrum when their PSAs overlap.

Several commercial entities have concocted proposals to alter the carefully-constructed Commission decision by which spectrum is shared between grandfathered EBS systems and nearby co-channel BRS systems.⁶ IMWED supports the positions set forth by Catholic Television Network and National ITFS Association in favor of retaining the current 90-day negotiating period followed, if necessary, by a split-the-football default solution.⁷ The Commission's current approach was adopted after careful consideration and creates the proper balance between encouraging mutually acceptable voluntary solutions with a back-up solution that is fair to all parties.

Respectfully submitted,

THE ITFS/2.5 GHz MOBILE WIRELESS
ENGINEERING & DEVELOPMENT
ALLIANCE, INC.

By: /s/
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⁶ See, for instance pleadings of NY3G Partnership, NextWave Broadband, Inc., and Line of Site, Inc.

⁷ Opposition to Petitions for Reconsideration of Catholic Television Network and the National ITFS Association, pp. 2-3.

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Dated: August 28, 2006

Certificate of Service

I, Chris Artem, hereby certify that copies of the foregoing Consolidated Opposition to Petitions for Reconsideration and Clarification have been served by first class mail this 29th day of August, 2006 on the following:

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